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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/647,752

08/26/2003

Richard F. Stockel

RFS-2-03

2291

59744

7590

05/17/2006

JACK MATALON  
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EXAMINER

ROBERTS, LEZAH

ART UNIT

PAPER NUMBER

1614

DATE MAILED: 05/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/647,752	<b>Applicant(s)</b> STOCKEL, RICHARD F.	
	<b>Examiner</b> Lezah W. Roberts	<b>Art Unit</b> 1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on March 6, 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 2-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 21-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### **Previous Rejections**

All previous rejections have been withdrawn.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### **Claim Objections**

Claim 12 is objected to because of the following informalities: the term “diocidal” is misspelled and should read “biocidal”. Appropriate correction is required.

Objection withdrawn.

### **Claim Rejections - 35 USC § 112 – Indefiniteness (New)**

Claims 21 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 21 and 23 contains the trademark/trade name Tego Betaine ZF®. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the

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goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a betaine surfactant and, accordingly, the identification/description is indefinite.

### **Claim Rejections - 35 USC § 103 - Obviousness**

Claims 1 and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polefka et al. (US 5,180,577) in view of Sköld et al. (Eur J. or Oral Sci. 1998).

The Applicant argues in the response and also in an interview between the Examiners, the Applicant and Applicant's Attorney conducted on February 14, 2006 that the complex recited in the amended claims is made by a metathesis reaction between a thymol salt (thymolate) and a chlorhexidine salt yet there is no support for this reaction in the specification. The specification does disclose a chlorhexidine-thymol complex but not the means to making the complex. There is also no indication of how much free thymol and chlorhexidine is in equilibrium with the complex. The free thymol and chlorhexidine encompasses compositions commercially available and also those disclosed by prior art. The limitation is not disclosed in the claim as agreed upon in the interview. There is also no support in the specification pointing out the advantages of using a chlorhexidine-thymol complex over the two components free in the composition. The applicant argues a thymol anion is needed in order to form the complex and the complex will not form in the presence of thymol. The specification makes no mention of the thymol salt therefore from the disclosure it is concluded that these complexes are

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made by using thymol and occur readily when in the two components are in the same solution. The specification does state these reactions happen at room temperature therefore enforcing the idea these complexes form readily. The Applicant also fail to show any type of data that the complexes are indeed complexes and their stability. The Applicant also argues betaine forms a strong complex with the chlorhexidine, there is no mention of how adding these betaines affect the elected complex, for example causing the complex to dissociate creating a complex between chlorhexidine and betaine. The Applicant fails to prove that a complex has been make and does not disclose whether free thymol and chlorhexidine is present in equilibrium with the complex.

Claims 1 and 21-24 are rejected.

Claims 2, 5-6, 9-11 and 13-20 are withdrawn.

Claims 3-4, 7-8 and 12 are canceled.

No claims allowed.

This action is **FINAL**.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lezah W. Roberts whose telephone number is 571-272-1071. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

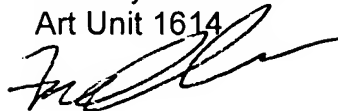
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Lezah Roberts  
Patent Examiner  
Art Unit 1614

A handwritten signature in black ink, appearing to read "Leah Roberts", with a long horizontal flourish extending to the right.

Frederick Krass  
Primary Examiner  
Art Unit 1614

A handwritten signature in black ink, appearing to read "Frederick Krass", with a long horizontal flourish extending to the right.